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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,703	08/28/2001	Koji Takahashi	Q63861	4454

7590 05/27/2005

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EXAMINER
BAYAT, ALI

ART UNIT	PAPER NUMBER
2625	

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/939,703	Applicant(s) TAKAHASHI, KOJI	
	Examiner Ali Bayat	Art Unit 2625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *Remarks on 11/29/04*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 August 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *8/6/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see Remarks pages 3-4, filed 11/29/04, with respect to the rejection(s)of claim(s) 1-14 under 102(e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ikenoue et al. (US 5,168,303) and Kubo et al. (US 6,545,710).

Double Patenting

2. *A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See* Miller v. Eagle Mfg. Co., *151 U.S. 186 (1894);* In re Ockert, *245 F.2d 467, 114 USPQ 330 (CCPA 1957); and* In re Vogel, *422 F.2d 438, 164 USPQ 619 (CCPA 1970).*

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-14 provisionally rejected under the judicially created doctrine of double patenting over claim1-6,11-14,16-19 of copending Application No. 10290335. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: Method and apparatus for correcting white balance, method for correcting density and a recording medium on which a program for carrying out the methods is recorded.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikenoue et al. (US 5,168,303) in view of Kubo et al. (6,545,710).

In regard to claims 1 and 9, Ikenoue provides for estimating a color temperature of a photographing light source with which the color image has been taken (col.16 lines 25-33); and correcting image signals of the color image based on the estimated color temperature (col.16 lines 30-33). Idenoue does not provide for estimating a color temperature by using at least gray and/ or skin color information contained in an input

color image. Kubo provides for estimating a color temperature by using at least gray and/ or skin color information contained in an input color image (col.14 lines 2-22, note by comparing the chromaticity coordinates (X, Y) with the black body trace A (which corresponds to using gray color information contained in an input color image). The prior art of Ikenoue and Kubo are combinable because they are from same field of endeavor (estimating a color temperature in an image). It would have been obvious to a person of ordinary skill in the art to incorporate the teaching of Kubo with system and method of Ikenoue, because the invention of Kubo relates to adjustment of white balance of a picked up image (col.1 lines 5-8). Therefore, it would have been obvious to combine prior art of Kubo with prior art of Ikenoue to obtain the invention as specified in claims 1 and 9.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ikenoue et al. (US 5,168,303) in view of Kubo et al. (6,545,710), further in view of Shiraiwa et al. (6,160,579).

In regard to claim 2, the prior art of Ikenoue provides for estimating a color temperature of a photographing light source with which the color image has been taken (col.16 lines 25-33); and correcting image signals of the color image based on the estimated color temperature (col.16 lines 30-33). Idenoue does not provide for estimating a color temperature by using only skin color information contained in an input color image. Shiraiwa provides for color balance of whole image can be adjusted by using an object of a given color in a given position on the screen (color of skin) colo.21 lines 38-48). The prior art of Ikenoue and Shiraiwa are combinable because they are

from same field of endeavor (estimating a color temperature in an image). It would have been obvious to a person of ordinary skill in the art to incorporate the teaching of Shiraiwa with system and method of Ikenoue, because the invention of Shiraiwa relates to an image processing apparatus and method of adjusting the hue of an input image signal (col.1 lines 5-9).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ali Bayat whose telephone number is 571-272-7444. The examiner can normally be reached on M-F 9:00-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on 571-272-7453. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

5/16/05

Ali Bayat AB
Patent Examiner
Group Art Unit 2625

KANJIBHAI PATEL
PRIMARY EXAMINER